

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

Charles E. Syvertson,)	
)	
Petitioner,)	ORDER ADOPTING
)	REPORT AND RECOMMENDATION
vs.)	
)	
Tim Schuetzle,)	
)	Case No. 1:-06-cv-007
Respondent.)	

Before the Court is Petitioner Charles Syvertson's Petition under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody, filed on February 1, 2006. Magistrate Judge Charles S. Miller, Jr. reviewed Syvertson's complaint and, on February 16, 2006, submitted a Report and Recommendation. Judge Miller concluded that Syvertson's petition be dismissed without prejudice for lack of jurisdiction because the Court has not received permission from the Eighth Circuit Court of Appeals to consider the petition as required by 28 U.S.C. § 2244(b)(3)(A).

On February 28, 2006, Syvertson filed an objection to the Report and Recommendation. Syvertson asserts that his petition should not be considered second or successive and reiterates his assertion that his claims could not have been included in the prior petitions. See Docket No. 4.


The Court has carefully reviewed the Report and Recommendation, Syvertson's objections and attachments, relevant case law, and the record as a whole and finds that the Report and Recommendation is persuasive. The Court **ADOPTS** the Report and Recommendation (Docket No. 3) wherein Judge Miller concluded that Syvertson's petition be dismissed without prejudice for lack of jurisdiction because the Court has not received permission from the Eighth Circuit Court of

Appeals to consider the petition as required by 28 U.S.C. § 2244(b)(3)(A), and **DISMISSES**, without prejudice, Syvertson's petition for those reasons. (Docket No. 1).

The Court certifies that any appeal would be frivolous, could not be taken in good faith, and may not be taken in forma pauperis. The Court further certifies that Syvertson has failed to make a substantial showing of the denial of a constitutional right and will not grant a certificate of appealability.

IT IS SO ORDERED.

Dated this 2nd day of March, 2006.



Daniel L. Hovland, Chief Judge
United States District Court